

FISCAL NOTE
 LEGISLATIVE FISCAL ANALYST ESTIMATE

ESTIMATE OF FISCAL IMPACT – STATE AGENCIES (See narrative for political subdivision estimates)				
	FY 2020-21		FY 2021-22	
	EXPENDITURES	REVENUE	EXPENDITURES	REVENUE
GENERAL FUNDS	See Below	See Below	See Below	See Below
CASH FUNDS	See Below	See Below	See Below	See Below
FEDERAL FUNDS	See Below	See Below	See Below	See Below
OTHER FUNDS	See Below	See Below	See Below	See Below
TOTAL FUNDS	See Below	See Below	See Below	See Below

Any Fiscal Notes received from state agencies and political subdivisions are attached following the Legislative Fiscal Analyst Estimate.

LB 1218 is the Nebraska Historically Underutilized Business Program Act. The purpose of the act is to promote full and equal business opportunities for all businesses in an effort to remedy disparity in state and local procurement and contracting.

Section 3 defines terms for the act.

Section 4 allows for businesses to become certified as an historically underutilized business (HUB) and retain that certification for five years, as long as the business' certification status does not change. The Department of Labor and Department of Transportation may conduct any necessary investigation to determine qualifications for the program. A business must complete an annual affidavit of certification and may recertify up to three times, for a maximum of fifteen years. The Department of Labor shall maintain a list of all businesses that have been certified and the nature of the business along with its capacity to perform the work.

Section 5 requires each constitutional office, state agency, and political subdivision to make a good faith effort to utilize HUBs in contracts for construction, services, and commodities purchases. The statewide HUB goals for the procurement categories are as follows:

- 10% for heavy construction other than building contracts;
- 20% for all building construction, including general contractors and operative builders contracts;
- 20% for all special trade construction contracts;
- 10% for professional services contracts
- 10% for all other services contracts; and
- 10% for commodities contracts.

Government entities shall establish their own specific HUB goals for each procurement category. At a minimum, the statewide HUB goals should be each government entity's starting point for establishing specific goals.

TECHNICAL NOTE: As written, section 5 does not appear to *require* utilization of HUBs. Section 5(1) requires "a good faith effort to utilize historically underutilized businesses in contracts". Section 5(2) provides for statewide "goals", but does not specifically *require* that such goals be achieved.

Section 6 sets forth priorities that, if there is an adequate number of qualified and certified HUBs, first priority shall be given to Tier 1 HUBs; and then Tier II HUBs, followed by Tier III HUBs. Any business receiving a sales and use tax incentive from this state shall receive an additional 1% of such sales and use tax incentive for utilizing a Tier I HUB. 0.5% for utilizing a Tier II or Tier III HUB. Total incentives awarded shall not exceed five million dollars for all businesses. Each government entity that considers entering into a contract with an expected value of one hundred thousand dollars or more over the life of the contract shall determine whether subcontracting opportunities are probable. If so, the government entity shall require that each bid, proposal, offer, or other applicable expression of interest include a HUB subcontracting plan as set forth in section 5.

Section 9 requires the Department of Labor to offer HUBs assistance and training regarding state procurement procedures. A government entity with a biennial budget that exceeds ten million dollars in contracts shall designate a staff member to service as the HUB coordinator for the agency. The position of coordinator must be at least equal to the position of procurement director.

Section 10 requires the Department of Labor to compile, in the most cost-efficient form, a directory of businesses certified as HUBs. The directory shall be updated and provide access electronically or in another acceptable form to each government entity.

Section 11 requires the Department of Labor to design a mentor-protégé program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract.

Section 15 allows the Director of Administrative Services to adopt and promulgate rules and regulations to administer the Nebraska Historically Underutilized Business Program Act.

The Department of Labor estimates the need for additional staffing, temporary space, a contractor, and other related operational expenses to administer the program as defined in LB 1218. The total estimate is for \$748,720 in fiscal year 2020-21 and fully annualized costs of \$1,048,380 beginning in fiscal year 2021-22. There is no basis to disagree with these estimates for start-up and ongoing operational costs.

The Department of Transportation estimates the need for 2.0 FTE to address their administrative requirements, as outlined in LB 1218. This cost is estimated to be \$45,412 in fiscal year 2020-21 and fully annualized costs of \$181,646 beginning in fiscal year 2021-22. There is no basis to disagree with these estimates.

The Department of Health and Human Services estimates the need for 1.0 FTE to address the provisions of LB 1218. This is based on the assumption of approximately 110 contracts that exceed the \$100,000 threshold, receiving contracting plans from contractors, DHHS having to set HUB goals, annual reporting to the Legislature, and auditing HUB contracting plans. DHHS states that procurement would need to add a Staff Assistant II for invoice processing to meet timeliness requirements, which would likely increase vendor costs passed on to the agency. In all likelihood this will not happen. The first requirement is to determine the "probability" factor for contracts over \$100,000. The time and effort to determine that is minimal. In a worst case scenario, an agency will err on the side of caution and assume probability of subcontracting. Receiving HUB plans from vendors should have no cost. The provisions of LB 1218 should not require any additional auditing. Such contracts are already audited. Insofar as timeliness of processing invoices is concerned, the provisions of the bill do not affect this.

The Department of Administrative Services estimates the need for 11.0 FTE to administer the provisions of LB 1218. As the lead state agency for purchasing, construction, and services, the workload at DAS will likely increase dramatically due to the bill's provisions. There is no basis to disagree with the agency's estimates.

The provisions of LB 1218 could result in costs for any state agency. Without canvassing each agency, a true estimate cannot be determined. Even if these estimates were provided, their accuracy would be suspect, due to the permissive nature of section 5. Full participation in the HUB Program and achieving specific goals is not mandated. The cost of the program's infrastructure will be there, but any costs that are a factor or program utilization cannot be determined.

Based on agency responses received, the following table summarizes the cost estimates. For purposes of this table, the mid-point of the DAS estimate was used.

Agency	Fiscal Year 2020-21				Fiscal Year 2021-22			
	General	Cash	Revolving	Total	General	Cash	Revolving	Total
Labor	748,720			748,720	1,048,380			1,048,380
Transportation		45,412		45,412		181,646		181,646
DHHS	67,263			67,263	67,263			67,263
DAS			1,282,773	1,282,773			1,282,773	1,282,773
Total	815,983	45,412	1,282,773	2,144,168	1,115,643	181,646	1,282,773	2,580,062

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1218	AM:	AGENCY/POLT. SUB: Department of Labor
REVIEWED BY: Neil Sullivan	DATE: 2/11/2020	PHONE: (402) 471-4179
COMMENTS: The Department of Labor assessment of fiscal impact from LB 1218 appears reasonable.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1218	AM:	AGENCY/POLT. SUB: Department of Health and Human Services
REVIEWED BY: Neil Sullivan	DATE: 2/7/2020	PHONE: (402) 471-4179
COMMENTS: The Department of Health and Human Services assessment of fiscal impact from LB 1218 appears reasonable.		

ADMINISTRATIVE SERVICES STATE BUDGET DIVISION: REVIEW OF AGENCY & POLT. SUB. RESPONSE		
LB: 1218	AM:	AGENCY/POLT. SUB: Department of Administrative Services
REVIEWED BY: Neil Sullivan	DATE: 2/7/2020	PHONE: (402) 471-4179
COMMENTS: The Department of Administrative Services assessment of fiscal impact and enterprise impact from LB 1218 appears reasonable.		

Please complete ALL (5) blanks in the first three lines.

2020

LB⁽¹⁾ 1218

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ NEBRASKA DEPARTMENT OF LABOR

Prepared by: ⁽³⁾ Katie Thurber Date Prepared: ⁽⁴⁾ 2-7-2020 Phone: ⁽⁵⁾ 402-471-9912

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2020-21</u>		<u>FY 2021-22</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	<u>\$748,720</u>	<u> </u>	<u>\$1,048,380</u>	<u> </u>
CASH FUNDS	<u> </u>	<u> </u>	<u> </u>	<u> </u>
FEDERAL FUNDS	<u> </u>	<u> </u>	<u> </u>	<u> </u>
OTHER FUNDS	<u> </u>	<u> </u>	<u> </u>	<u> </u>
TOTAL FUNDS	<u><u>\$748,720</u></u>	<u><u> </u></u>	<u><u>\$1,038,380</u></u>	<u><u> </u></u>

Explanation of Estimate:

LB 1218 creates the Nebraska Historically Underutilized Business Program Act. As proposed businesses may apply to the Commissioner of Labor to be certified as a historically underutilized business. If approved, the certification remains for five years. Businesses must annually provide an affidavit to the Commissioner to verify continued certification. LB 1218 gives both the Nebraska Department of Labor (NDOL) and the Nebraska Department of Transportation investigatory powers for determining if a business meets the definition of a historically underutilized business. NDOL may decertify the business if it violates any rule, policy, or procedure of the historically underutilized business program.

NDOL is required to maintain a list of all businesses that have certified and the nature of the business along with its capacity to perform the work.

Further, Section 6 of LB 1218 requires the Commissioner of Labor to prescribe forms for HUB plans and compliance with HUB subcontracting requirements.

Section 9 of LB 1218 requires NDOL to provide training regarding state procurement procedures and create and send historically underutilized businesses an orientation package upon certification or recertification.

Section 10 of LB 1218 requires NDOL to create a directory of businesses certified as historically underutilized. The directory must be updated and made available to every government entity. A copy of the directory must be provided to each government entity every January and July.

Section 11 of LB 1218 requires NDOL to create mentor-protégé program to foster long-term relationships between prime contractors and historically underutilized businesses and to increase the ability of historically underutilized business to contract with the state or to receive subcontracts under a state contract.

Technical note, the Commissioner of Labor does not have regulatory authority, but the Director of Administrative Services may adopt and promulgate rules and regulations to administer the Nebraska Historically Underutilized Business Program Act.

The Nebraska Historically Underutilized Business Program Act is a brand new program to be administered by NDOL. The Department anticipates placing this program within its Labor Standards Division. NDOL will need one Labor Standards Program Supervisor and three new Labor Standards Investigators. In addition, .25 of the Labor Standards Program Manager's time will shift to this program. NDOL will also need one Labor Market Research Analyst I.

Given the complexities, NDOL anticipates the need of a new Procurement Director to serve as the HUB Coordinator for the agency and one Attorney III. In the initial startup of the program, significant time from the agency's Finance Department is anticipated. The Department is anticipating .25 of a Controller and an additional Buyer II.

The program will also require NDOL to build new IT applications to manage the program. A full-time Contractor will be needed at \$200,000 for the first year. Backup costs for disk and data storage will be \$3,000 per year while annual maintenance will be \$20,730 each year. Additionally, NDOL will need .25 FTE from a Business Analyst. NDOL will require an additional Public Information Officer to develop materials required by the program and market the program generating Advertising expenses of \$3,000 in Year Two.

The program begins August 1, 2021. NDOL would hire the Labor Standards Supervisor, Attorney III, and IT Contractor around July 1, 2020 to properly develop the program. The Labor Standards Investigators and HUB coordinator will not be hired until closer to May 1, 2021 to prepare for the launch of the new program.

NDOL is currently renovating one of its two buildings. NDOL has relocated staff into its other buildings and leased space at the Terminal building. Due to staffing needs for the new program, additional space will need to be leased. NDOL is estimating leased costs to be \$370 per individual per month based on current market conditions while monthly lease rates for laptops are \$75.50 each. Furniture and phones for new positions are included at \$40,000 in Year One.

Total PSL for new positions is \$273,200 in Year One and \$573,643 in Year Two.

July 1, 2020:

- Labor Standards Program Manager: 0.25
- Labor Standards Program Supervisor: 1.0
- Attorney III: 1.0
- IT Contractor: 1.0
- Business Analyst: 1.0

May 1, 2021:

- HUB Coordinator: 1.0
- Labor Standards Investigator: 3.0
- Labor Market Research Analyst I: 1.0
- PIO: 1.0
- Controller: 0.25
- Buyer II: 1.0

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

POSITION TITLE	NUMBER OF POSITIONS		2020-21	2021-22
	20-21	21-22	EXPENDITURES	EXPENDITURES
PUBLIC INFORMATION OFFICER III	.17	1.00	9,715	59,629
LABOR STANDARDS PROGRAM MANAGER	.25	.25	18,528	18,954
LABOR STANDARDS PROGRAM SUPERVISOR	1.00	1.00	51,563	52,748
ATTORNEY III	1.00	1.00	90,654	92,739
CONTROLLER	.04	.25	4,403	27,028
LABOR STANDARDS INVESTIGATOR	.50	3.00	23,688	145,395
PROCUREMENT DIRECTOR	.17	1.00	8,596	52,761
RESEARCH ANALYST I	.17	1.00	7,153	43,903
BUYER II	.17	1.00	8,358	51,305
IT BUSINESS SYS ANALYST/COORD	1.00	1.00	73,473	75,163
Total Salaries	4.46	10.50	296,131	619,625
Benefits			111,049	232,359
Operating			341,540	196,396
Travel				
Capital outlay				
Aid				
Capital improvements				
TOTAL			748,720	1,048,380

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2020

LB⁽¹⁾ 1218 (Revised)

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Nebraska Department of Transportation

Prepared by: ⁽³⁾ Jenessa Boynton Date Prepared: ⁽⁴⁾ 2/5/2020 Phone: ⁽⁵⁾ 402-479-4691

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2020-21</u>		<u>FY 2021-22</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS				
CASH FUNDS	\$45,412		\$181,646	
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$45,412		\$181,646	

Explanation of Estimate:

LB 1218 adopts the Nebraska Historically Underutilized Business Program Act. This bill establishes a state-level program similar to the federal DBE program to encourage the use of historically underutilized businesses (HUB).

This bill will create a second program that would need to be administered separately from the DBE program.

A minimum of two additional full time employees will be needed in order to administer the program and track and report program data annually. Operating expenses, such as computer lease, phone, IT site support, training, etc. will be incurred for the two additional FTEs.

	<u>FY 2020 – 21*</u>	<u>FY 2021 - 22</u>
2 Highway External Civil Rights/DBE Officer, salary \$56,337/year, plus benefits	\$42,912	\$171,646
Operating cost for 2 Highway External Civil Rights/DBE Officer @ \$5,000	\$2,500	\$10,000
Total Salary, Benefits, and Operating Expense	\$45,412	\$181,646

*Calculated as April – June 2021

NDOT would realize fewer bids to certain projects, which in turn results in higher bids. The fiscal impact of fewer bids is undeterminable at this point.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2020-21</u>	<u>2021-22</u>
	<u>20-21</u>	<u>21-22</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Highway External Civil Rights/DBE Officer	2	2	\$28,169	\$112,674
Benefits.....			\$14,743	\$58,972
Operating.....			\$2,500	\$10,000
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....			\$45,412	\$181,646

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

State Agency or Political Subdivision Name:(2) Department of Health and Human Services

Prepared by: (3) Mike Michalski

Date Prepared 1-27-2020

Phone: (5) 471-6719

	<u>FY 2020-2021</u>		<u>FY 2021-2022</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	\$67,263		\$67,263	
CASH FUNDS				
FEDERAL FUNDS				
OTHER FUNDS				
TOTAL FUNDS	\$67,263		\$67,263	

Return by date specified or 72 hours prior to public hearing, whichever is earlier.

This bill would require the Department of Health and Human Services (DHHS) to subject its contracts exceeding \$100,000 per year to a process set forth under the HUB Act. By our rough count, DHHS, executes more than 110 contracts per year exceeding \$100,000. DHHS would be required to assess whether there was a probable likelihood of subcontracting for each contract greater than \$100,000. If it is probable, then DHHS must require a HUB contracting plan from the contractor, either as part of the competitive bid process or in dealings with the vendor before contract execution. It would require DHHS to set goals for HUB contracting, report annual on HUB contracting to the legislature, audit its HUB contracting plans, update and amend contracts if HUB contracting plans change, designate a HUB coordinator, and promulgate rules and regulations for a formal protest procedure.

It also defines various ways noncompliance with the act should be treated in the competitive bidding process, which DHHS would be subject to when it lets out an agency-processed Request for Proposal.

For DHHS vendors, it would require a HUB subcontracting plan, requiring them to identify HUB businesses (as qualified by NDOL) to subcontract with. The plan is very detailed and would require significant effort on the behalf of DHHS contractors who fall under the "probable" standard.

Procurement would need to add a Staff Assistant II for invoice processing to meet timeliness requirements, which would likely increase vendor costs that would be passed on to DHHS. RFPs and contract process may be delayed. Additionally, processing and review time for contracts exceeding \$100,000 would increase which may cause issues with continuity of service.

MAJOR OBJECTS OF EXPENDITURE

PERSONAL SERVICES:	POSITION TITLE	NUMBER OF POSITIONS		2020-2021	2021-2022
		20-21	21-22	EXPENDITURES	EXPENDITURES
	V01842 Staff Assistant II	1	1	\$37,053	\$37,053
	Benefits.....			\$13,673	\$13,673
	Operating.....			\$16,537	\$16,537
	Travel.....				
	Capital Outlay.....				
	Aid.....				
	Capital Improvements.....				
	TOTAL.....			\$67,263	\$67,263

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2020

LB⁽¹⁾ 1218

FISCAL NOTE

State Agency OR Political Subdivision Name: ⁽²⁾ Department of Administrative Services (DAS) – Materiel Division; State Building Division, Director’s Office –Central Finance

Prepared by: ⁽³⁾ Jennifer Sommars-Link Date Prepared: ⁽⁴⁾ 01/28/2020 Phone: ⁽⁵⁾ 402-471-1405

ESTIMATE PROVIDED BY STATE AGENCY OR POLITICAL SUBDIVISION

	<u>FY 2020-21</u>		<u>FY 2021-22</u>	
	<u>EXPENDITURES</u>	<u>REVENUE</u>	<u>EXPENDITURES</u>	<u>REVENUE</u>
GENERAL FUNDS	_____	_____	_____	_____
CASH FUNDS	_____	_____	_____	_____
FEDERAL FUNDS	_____	_____	_____	_____
REVOLVING FUNDS	_____	_____	\$1,181,880 - \$1,383,665	\$1,181,880 - \$1,383,665
TOTAL FUNDS	=====	=====	===== (See Below)	===== (See Below)

Explanation of Estimate:

LB 1218 creates the Nebraska Historically Underutilized Business Program Act to become effective August 1, 2021.

Section 5 of the bill requires each constitutional office, state agency, and political sub to make a good faith effort to utilize historically underutilized businesses (HUB) in contracts for construction, services, including professional and consulting services, and commodities purchases. For building and special trade construction contracts that goal is 20% and for professional service, other services and commodities contracts that goal is 10%. It is unclear if the percentage means percent of dollars spent or of the number of contracts.

Section 6 of the bill requires any changes to subcontracting plan to be modified by amendment prior to subcontracting work beginning, and all changes shall be approved in writing. The legislation also requires monitoring of all subcontracts of the prime contractor. Currently the Department of Administrative Services has no involvement in monitoring subcontractors. This would entail a significant amount of time and effort with no contractual relationship with subcontractor. This additional workload is another factor in requiring additional staff.

Materiel Division - State Purchasing Bureau (SPB) and State Building Division (SBD) will each have to develop a process to allow for such type of alternative procurement procedures to incorporate this type of exception or preference to vendor solicitations. All boilerplate documents, manuals and guidance documents will be required to be updated with the new processes and information. As subcontracting plans are also to be evaluated, evaluation processes will require modification and/or alternative evaluation processes created for those contracts including a subcontracting plan. Those manuals and guidance documents will also require modification. All existing staff will need to be trained on the new processes and training will need to be developed and pushed out to all agencies. For those entities not impacted by LB 1218, such as boards and commissions, existing guidelines and manuals will remain in place.

It is difficult to quantify the amount of time and resources required for such work. It is estimated that such efforts would likely take months of work on the part of the SPB and SBD to develop and standardize such processes. Training sessions would need to be held with other state agencies to explain and educate the agencies on new procurement processes. Such legislation will require SPB to maintain two sets of processes, one for entities required to utilize HUB businesses and one for entities not subject to the bill.

LB 1218 also provides that any solicitation needs to be evaluated prior to issuance to determine if a subcontracting plan is needed on any contract with an expected value of \$100,000 or more over the life of the contract. If determined to be required, it is a required aspect of a contractor's submission and if not included, such contractor's submission is to be rejected, which may increase costs to the state. It will be difficult to determine prior to receiving submissions, whether or not a subcontracting plan will be required, as state entities' do not typically have such insight and rely on bid submissions and a contractor's proposal to know when subcontractors are required.

When subcontracting plans are required, it is the government entity's responsibility to audit the contractor's compliance with the subcontracting plan. Determining if a subcontracting plan is needed and the auditing would need to be completed by the HUB coordinators that will be required to implement this legislation. These steps of evaluating and auditing are anticipated to take a significant amount of time, which SPB and SBD cannot absorb within current staffing.

SPB would require five (5) additional FTE's to manage such workload and the other requirements of the Act. Such positions would be contract managers.

The estimated cost for these five (5) new FTE's is \$551,463 in FY21-22. It is assumed that the staff would be in place July 1, 2021. These costs include salary and benefits (health insurance is based on the State's share of the highest cost family plan); ongoing annual operating costs (OCIO expenses including computer leasing costs, printing/publication, rent/depreciation surcharge, and other supplies.) There would also be a one-time cost of \$1,400 per FTE in FY21-22 for set up costs and the purchase of new non-capitalized equipment (monitors, furniture, etc.).

These additional costs would result in the need for additional revolving appropriation and an increased DAS Materiel Purchasing Assessment.

The table below summarizes the estimated impact by fund type of the increased statewide Purchasing Assessment. The allocation by fund type is based on a four (4) year [2016-2019] average of purchasing assessment.

Fund Type	FY21-22
General Fund	\$122,038
Cash Fund	\$303,035
Federal Fund	\$60,436
Revolving Fund	\$65,954
Total	\$551,463

SBD would also require five (5) additional FTE's to manage such workload and the requirements of the Act. Such positions would be contract managers.

The estimated cost for these five (5) new FTE's is \$551,463 in FY21-22. It is assumed that the staff would be in place July 1, 2021. These costs include salary and benefits (health insurance is based on the State's share of the highest cost family plan); ongoing annual operating costs (OCIO expenses including computer leasing costs, printing/publication, rent/depreciation surcharge, and other supplies.) There would also be a one-time cost of \$1,400 per FTE in FY21-22 for set up costs and the purchase of new non-capitalized equipment (monitors, furniture, etc.).

These additional costs would result in the need for additional revolving appropriation and an increase in SBD rental rates.

The table below summarizes the estimated impact by fund type of the increased SBD rental rates. The allocation by fund type is based on a four (4) year [2016-2019] average of operating expenses.

Fund Type	FY21-22
General Fund	\$139,847
Cash Fund	\$207,564
Federal Fund	\$113,317
Revolving Fund	\$90,735
Total	\$551,463

Other agencies who have a biennial budget exceeding \$10 million in contracts are required by the bill to designate a staff member to serve as the HUB coordinator. Each government entity is required to have a HUB coordinator who is required to implement the mentor-protégé program that will be established by the Department of Labor. The required implementation of the mentor-protégé program is another factor in the need of additional staff. It is unknown if other agencies will require an additional FTE for such role or if such responsibilities can simply be assigned to such designated individual. However, it is assumed, based on the size and the dollar amount in contracts, that some of the larger agencies will certainly need a minimum of one HUB coordinator, such as the Department of Health and Human Services, Department of Corrections, Game and Parks, and State Patrol. It is difficult to estimate what other agencies might meet the requirements of needing a HUB coordinator.

There are numerous requirements on the part of the prime contractors to provide subcontracting plans in forms prescribed by the Department of Labor, as well as ongoing reporting, etc. This legislation could greatly increase costs to the state by adding costs to purchasing of goods and services as the contractors will certainly incorporate such costs into the contracted price. The increased cost however, is unknown.

If the prime contractor fails to implement the subcontracting plan in good faith, the nonperformance can be reported to DAS. The contract may be revoked for breach and a claim made against the prime contractor.

All HUB businesses will be paid within fourteen (14) days of the date of invoice and all prime contractors utilizing a HUB subcontracting plan are to be paid within thirty (30) days of the date of invoice. It is unclear if these are calendar days or business days.

As part of the payment process the default payment terms in the ERP (Enterprise Resource Planning) system would require a manual change for each bill of this type to be processed. This additional process would require updates to Accounts Payable policies and procedures at the Agency level.

Currently the Prompt Payment Act requires that a creditor receive full payment on or before the forty-fifth (45) calendar day.

The DAS – Director’s Office - Central Finance processes all vendor payments for the twelve (12) Divisions of the Agency; however the procurement and the invoice approval process are decentralized. Many invoices are entered and approved first at a facility [where the goods and services are received] that is located out-state before being sent electronically using the State’s ECM solution (Electronic Content Management) to the Division’s management office for additional review before they are sent electronically to Central Finance for payment processing. Another Division within DAS cannot approve invoices for payment without review and approval by staff at other state entities. Each level of approval is necessary to ensure proper internal controls and is performed by staff that has other duties and responsibilities.

During FY2019 Central Finance processed over 29,000 vendor payments.

It is difficult to determine how many current and/or future vendors would qualify for the fourteen (14) and thirty (30) day payment deadline, but even with the use of an electronic solution it will be very challenging to meet such deadlines consistently.

Central Finance would require an additional FTE, an Accountant I, to assist the Agency's twelve (12) Divisions in monitoring the status of invoices in the State's ECM solution, review the evidence that is submitted, to help research contracts to determine if a signed contract changes the payment schedule, track invoices that haven't been entered into the State's ECM solution and to assist with Central Finance Accounts Payable processing/pre-audit as needed.

One-time costs would be incurred to create a new queue for and to make changes to workflows for those invoices that are due within fourteen (14) and thirty (30) days.

The estimated cost for this FTE \$78,954 in FY21-22. These costs include salary and benefits (health insurance is based on the State's share of the highest cost family plan); ongoing annual operating costs (OCIO expenses including computer leasing costs, printing/publication, rent/depreciation surcharge, and other supplies. There would also be a one-time cost of \$1,400 in FY21-22 for set up costs and the purchase of new non-capitalized equipment (monitors, furniture, etc.) and \$3,840 for approximately 40 hours of OCIO Application Development time @ \$96/hour to develop additional queues and workflows in the DAS Accounts Payable ECM solution.

These additional costs would result in the need for additional revolving fund appropriation and an increased Director's Office - Central Finance Assessment that is charged to all the Divisions of DAS. Any increases to a DAS internal assessment can impact the enterprise due to possible increases in rates charged to other agencies for DAS goods and services.

The Prompt Payment Act also allows any creditor to charge the agency interest on the unpaid balance at the rate specified in section 45-104.02. Currently interest charges begin to accrue on the thirty-first (31) calendar day after (1) the date of receipt by the agency of the goods or services or (2) the date of receipt by the agency of the bill for the goods or services, whichever is later and will terminate on the date on which payment of the amount due is made. It is impossible at this time to estimate the additional interest costs that might be incurred by the Divisions when payment isn't made within the fourteen (14) and thirty (30) day requirements.

Section 7 of the bill provides that any government entity utilizing state funds shall implement rules and regulations, and procedures to effectuate the Act as well as rules and regulations establishing formal protest procedures, to include a contested case hearing pursuant to the Administrative Procedure Act. Such hearing is to be held within 60 days after receipt of the protest. There would be a cost to each state entity in promulgating such rules and regulations; however such fiscal impact is unknown.

This protest process would be a departure from the Department of Administrative Services (DAS) and Materiel Division - State Purchasing Bureau (SPB) bid protest process and would add a significant amount of additional staff time and additional cost due to the procedures provided under the Administrative Procedures Act (APA).

Under the APA the protesting bidder would have the right to an administrative hearing before a hearing officer to present their protest. The parties would be able to present testimony, cross-examine witnesses, and present evidence. Under the APA, the parties have the right to request discovery, subpoenas, and protective orders, and to file motions. The hearing officer can conduct a pre-trial conference to rule on matters brought before the hearing officer, and procedural matters related to conducting the hearing. The protesting party can request that a transcript of the proceedings be made and that the rules of evidence apply to the hearing. Either party is entitled to judicial review of the hearing officer's final ruling in the District Court, and may appeal the District Court ruling to the Court of Appeals.

The costs of the formal hearing are paid by the party against whom the final decision is rendered. If the State appeals a final decision, court costs and transcription fees would be the obligation of the State. There would be additional costs based upon the number of hours State employees would have to allocate to respond to the bid protest under the APA that would not be incurred under the current protest process. This is difficult to determine as it would be based upon the complexity of the bid protest and by the protesting bidder's determination to overturn the

contract award. For SPB staff it could be hours to tens of hours, and for the attorneys it could be tens of hours to over a hundred hours. Any hearing costs charged to DAS Materiel – Purchasing would eventually require additional revolving fund appropriation and an increase in the Materiel – Purchasing Assessment.

The fiscal impact of this bill is difficult to quantify due to the number of variables; variables that are mostly controlled by the protesting bidder. The following provides costs for personnel and services that would be necessary for a bid protest under pursuant to the APA.

Hearing officer: \$150.00 to \$800.00 per hour plus expenses. (Hearings could last between a half-day to a week)

Court Reporter: If no transcript is ordered the cost is \$90.00 for the first hour and every hour thereafter is \$70.00. If a transcript is ordered the cost is \$40.00 for the first hour and \$30.00 per hour for every hour thereafter, but the transcript fee is an additional charge which varies based upon the nature and complexity of the transcript.

The estimated costs per hour are based on current salary (minimum permanent) and health insurance costs (most expensive plan), plus FICA, retirement, Employee Assistance Program and Workers' Compensation. Time necessary to respond to discovery, provide witness statements, and prepare necessary work product to prepare for the judicial review and/or court hearings would vary from protest to protest. Such costs for existing personnel would be absorbed within current operations, however allocated resources to bid protests would reduce the resources available to allocate to other procurements.

Buyer III: [salary and benefits] – cost per hour \$41.42
Backup Buyer III: [salary and benefits] – cost per hour \$41.42
Staff assistant II: [salary and benefits] – cost per hour \$32.89
Attorney III: [salary and benefits] – cost per hour \$51.50
Paralegal I: [salary and benefits] – cost per hour \$35.87
Procurement Supervisor: [salary and benefits] – cost per hour \$43.62
State Procurement Manager: [salary and benefits] – cost per hour \$51.25
Materiel Administrator: [salary and benefits] – cost per hour \$81.81

The number of protest for services contracts that DAS received by year is as follows:

2019 - 10 Protests
2018 - 3 Protests
2017 - 10 Protests
2016 - 10 Protests
2015 - 1 Protests

It is difficult to determine the number of protests that will be submitted on contract awards under this bill.

An unquantifiable cost to the State caused by protests under this legislation would be the extended delay in executing contracts due to APA procedures. Upon issuance of the Notice of Intent to Award, the protesting bidder would have a period of time in which to file the protest. (Currently 10-days) A hearing date would then be set after reasonable notice as required by the APA. A minimum of thirty (30) days would be reasonable for the notice, but that time could be extended based upon motions, discovery, interviews and depositions, and a pre-trial conference. (1-3 additional months) After the hearing and receipt of the final ruling of the hearing officer, which will require time to compose, the losing party has 30 days to file an appeal to the District Court.

The District Court of Lancaster County is currently scheduling matters three (3) to six (6) months out. Additional time will be needed for the judge to consider the record and issue a ruling. The District Court judge can also remand the matter back to the hearing officer for further review in accordance with the remand. The amount of time for considering the remand by the hearing officer and issuance of a new ruling is an unknown. The ruling of the hearing officer upon remand can also be appealed to the District Court within thirty (30) days of the issuance of the decision on remand. The appealing party has thirty (30) days to get the record upon remand to the District Court. (For brevity, the timing in the District Court for the appeal on remand and the possibility of additional remand will not be addressed.)

A further appeal may be taken to the Court of Appeals within 30 days of the final ruling in the District Court. The Court of Appeals is currently scheduling matter three (3) to four (4) months out. The court will require additional time to review the record and issue a ruling.

A bid protest under this legislation could result in a delay of an estimated minimum of sixty (60) days and an estimated maximum of one and one-half years. Delay in executing the contract could result in additional unquantifiable costs to maintain continuity of services through statutory exceptions to the normal contracting process.

It has been SPB's experience that there can be multiple bid protests filed on the same intent to award. Additionally, it has been the experience of SPB that upon sustaining a bid protest and awarding to another bidder SPB receives additional protests on the new award. Under this bill both of these scenarios will lead to additional costs to the State as indicated above.

It is difficult to determine when existing DAS Materiel and Legal staff could no longer handle the additional workload and additional staff would be required. Any increased cost would result in an increase to the state-wide biennial Purchasing Assessment and the DAS Director's Office – Central Legal assessment.

Due to the potential for legal precedent being set by this bid protest process, the State's interests would be best served if the process were centralized. If the process were centralized in DAS – Materiel - SPB at least one Attorney III and one Paralegal would need to be added to the DAS – Materiel SPB staff to handle statewide bid protests. The estimated cost for these two FTE's is \$201,785 in FY21-22. These costs include salary and benefits (health insurance is budgeted using the State's current share of the highest cost family plan as a base); and ongoing annual operating costs (OCIO expenses including computer leasing costs, printing/publication, rent/depreciation surcharge and other supplies. There would also be a one-time cost of \$1,400 for each FTE in FY20-21 for set up costs and the purchase of new non capitalized equipment (monitors, furniture, etc.).

These additional costs would result in the need for additional revolving fund appropriation and an increase in the Materiel – Purchasing Assessment.

The increase in FTE's, benefits and operating costs for this proposal aren't included in the table below. They are reflected in the table above in the range in revolving fund appropriation and required additional revenue.

The table below summarizes the estimated impact by fund type of the increased statewide Purchasing Assessment. The allocation by fund type is based on a four (4) year [2016-2019] average of the Purchasing Assessment.

Fund Type	FY20-21
General Funds	\$44,655
Cash Funds	\$110,883
Federal Funds	\$22,114
Revolving Funds	\$24,133
Total Funds	\$201,785

Section 8 of the bill provides the ability of a sanctioned or penalized contractor to appeal such sanctions or penalties in accordance with the Administrative Procedure Act. Under the APA the contractor would have the right to an administrative hearing before a hearing officer to present their case. The parties would be able to present testimony, cross-examine witnesses, and present evidence. Under the APA, the parties have the right to request discovery, subpoenas, and protective orders, and to file motions. The hearing officer can conduct a pre-trial conference to rule on matters brought before the hearing officer, and procedural matters related to conducting the hearing. The contractor can request that a transcript of the proceedings be made and that the rules of evidence apply to the hearing. Either party is entitled to judicial review of the hearing officer's final ruling in the District Court, and may appeal the District Court ruling to the Court of Appeals.

The costs of the formal hearing are paid by the party against whom the final decision is rendered. If the contractor's appeal is successful, the court costs and transcription fees would be the obligation of the State. There would also be additional costs based upon the number of hours State employees would have to allocate to respond to the request associated with the APA hearing that would not normally be incurred.

While many of the areas of fiscal impact are difficult to determine, this legislation would have a large fiscal impact to the various Divisions' of the Department of Administrative Services as well as to the entire enterprise.

BREAKDOWN BY MAJOR OBJECTS OF EXPENDITURE

Personal Services:

<u>POSITION TITLE</u>	<u>NUMBER OF POSITIONS</u>		<u>2020-21</u>	<u>2021-22</u>
	<u>20-21</u>	<u>21-22</u>	<u>EXPENDITURES</u>	<u>EXPENDITURES</u>
Contract Manager		10		\$673,532
Accountant I		1		\$36,802
Benefits.....				\$403,760
Operating.....				\$67,796
Travel.....				
Capital outlay.....				
Aid.....				
Capital improvements.....				
TOTAL.....				\$1,181,880